



REPUBLIC OF KENYA



**In re Estate of Nduku Ndolo Wathome (Deceased) (Succession Cause 439 of 2011) [2024] KEHC 7103 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 7103 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 439 OF 2011**

**G MUTAI, J**

**MARCH 20, 2024**

**IN THE MATTER OF THE ESTATE OF NDUKU NDOLO WATHOME(DECEASED)**

**RULING**

1. Jonathan Mutua Nzangi filed an objection to confirmation of grant, dated 6<sup>th</sup> February 2023.
2. The matter was canvassed by way of *viva voce* evidence. Upon the closure of both parties' cases, the objectors were directed to file a valuation report on 30<sup>th</sup> November 2023. When the matter came up on 29<sup>th</sup> January 2024, Ms Mwanzia for the Administrator/Respondent informed the court that the valuation reports had been filed and that 1<sup>st</sup> Objector had filed an application dated 26 January 2024. The same is what is coming up before this court for determination.
3. The summons by the applicant/objector dated 26<sup>th</sup> January, 2024 seeks the following orders:
  - a. That the honourable court be pleased to order and direct that all the properties comprising the estate of Nduku Ndolo Wathome (deceased) as stipulated in the further affidavit in support of confirmation of grant sworn by Bahati Nduku Salim on 1<sup>st</sup> February 2023 be valued to establish their current market value for purposes of equitable distribution of the estate amongst all beneficiaries;
  - b. That this honourable court be pleased to order and direct that all the properties comprising the estate of Nduku Ndolo Wathome (deceased) as stipulated in the affidavit of protest against confirmation of grant sworn by Fatuma Nduku on 20<sup>th</sup> February 2023 be valued to establish their current market value for purposes of equitable distribution of the estate amongst all beneficiaries.
  - c. That this honourable court be pleased to order and direct that the costs of valuation of the properties be borne by the estate of the late Nduku Ndolo Wathome (deceased); and
  - d. Costs of this application be provided for.
4. The application is premised on the grounds stated in the body of the said application as well as on the supporting affidavit of Jonathan Mutua Nzangi 1<sup>st</sup> Objector/Applicant sworn on 26<sup>th</sup> January 2024.



5. He stated that the Petitioner/Respondent was allowed by this Court to produce particulars in relation to two properties comprising part of the estate of the late Nduku Ndolo Wathome, namely, Title No. Mangelete Settlement Scheme/ 1555 and 1556 situated in Kibwezi East Sub County, Makueni County, which she did and included a valuation report showing a value of Kes.26,000,000/- for the two properties. Further, he had engaged different firms of valuers who valued the properties at the aggregate value of Kes.5,850,000/- which was way below the value stated in the valuation report filed by the Petitioner/Respondent. He deposed that there was no way to establish which report reflects the fair value of the two plots. In the circumstances, he urged that it would be fair to have all properties that comprise the deceased's estate valued to determine whether his family was given a fair share. The same should extend to the – properties identified by the 2<sup>nd</sup> Objector.
6. He further stated that the deceased's estate should cover the valuation costs of all properties and urged the court to allow the application.
7. In response the Petitioner/Respondent filed a Replying Affidavit sworn on 2<sup>nd</sup> February 2024. She stated that the court is only dealing with the objection proceedings and valuation for purposes of distribution cannot be an issue at this stage and that if the court agrees with the 1<sup>st</sup> Objector/Applicant, then it will result in revocation of the grant, leading to a fresh process and there will be nothing to distribute. She stated that it was her wish to have this matter concluded.
8. The court directed the parties to file written submissions, but none of them complied with the orders.
9. I have considered the summons dated 26<sup>th</sup> January 2024, the response thereto. In my view, I am called upon to determine whether the valuation of the estate properties is necessary at this stage.
10. This court derives its powers from section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules.

Section 47

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

Rule 73

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

11. The Court in the case of [In re Estate of Julius Ndubi Javan \(Deceased\)](#) [2018] eKLR in discussing the duty of the probate court stated,
 

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries.
12. I note that I have previously allowed an application for valuation. I see no harm in granting the 1<sup>st</sup> Objector/Applicant his prayer. Valuation will greatly assist the Court during subdivision.
13. The upshot of the foregoing is that I have found merit in the application. The same is hereby allowed as prayed.
14. As this is a family matter I make no orders as to costs.
15. Orders accordingly.



**DATED AND SIGNED AT MOMBASA THIS 20<sup>TH</sup> DAY OF MARCH 2024.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

No appearance for the Petitioner/Respondent;

No appearance for the 1<sup>st</sup> Objector/Applicant;

No appearance for the 2<sup>nd</sup> Objector;

Arthur - Court Assistant.

